

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:

*George Moore, et al. v. UniFirst Corp., et al.*,  
Dkt. No. 1:14-cv-13027-RWZ

MDL No. 2419  
Dkt. No 1:13-md-2419 (RWZ)

**ANONYMOUS DEFENDANTS' ASSENTED-TO MOTION TO STAY RESPONSIVE  
PLEADING DEADLINES PENDING TRANSFER OF  
RELATED CASES TO MDL NO. 2419**

Defendants Anonymous Health Care Providers 1, 2, 3 and 5 ("Anonymous Defendants")<sup>1</sup> hereby move, with the assent of Plaintiff, to stay the deadline to answer, move to dismiss, or otherwise file responsive pleadings in the above-captioned matter until 30 days after the conclusion of all transfer proceedings currently pending before the Judicial Panel on Multidistrict Litigation involving cases in which the Anonymous Defendants are named.

In support of this motion, the Anonymous Defendants state as follows:

1. The Anonymous Defendants were served, respectively, with process on November 13, 2014. Pursuant to FED. R. CIV. P. 12, the Anonymous Defendants are currently required to answer, move to dismiss, or otherwise file responsive pleadings on or before December 4, 2014.

2. Two other related cases are currently pending against the Anonymous Defendants, among others, before the United States District Court for the Southern District of

<sup>1</sup> For the reasons stated in Plaintiff's Complaint, Plaintiff has identified the undersigned defendants by pseudonym in compliance with the Indiana Medical Malpractice Act, Ind. Code § 34-8-1-1, *et seq.* See Compl. ¶ 2 n.1 (Dkt. No. 1).

Indiana: *Timothy Griggs v. UniFirst Corp., et al.*, No. 3:14-cv-112-RLY-WGH (“*Griggs*”), and *James Allen v. Anonymous Health Care Providers 1-8*, No. 3:14-cv-0119-RLY-WGH (“*Allen*”). The instant case, as well as *Griggs* and *Allen*, all arise out of the alleged administration of contaminated *methylprednisolone acetate* compounded by NECC. *See, e.g.*, Compl. ¶ 1 (Dkt. No. 1) (“This lawsuit arises out of a national outbreak of fungal disease from non-sterile contaminated drugs compounded by [NECC] . . . . The ANONYMOUS PROVIDERS, identified herein, purchased the contaminated drug which ultimately was injected into plaintiff GEORGE MOORE’s low back to treat his pain.”).

3. On August 20, 2014, the Judicial Panel on Multidistrict Litigation (“JPML”) entered a Conditional Transfer Order that found that *Griggs* involved “questions of fact that are common to the actions previously transferred to the District of Massachusetts and assigned to Judge Zobel.” MDL No. 2419, Dkt. No. 545 (J.P.M.L. Aug. 20, 2014) (CTO-43). Accordingly, the JPML conditionally transferred *Griggs* to this MDL. *Id.*

4. On October 22, 2014, the JPML entered a Conditional Transfer Order with almost identical findings that conditionally transferred *Allen* to this MDL. *Id.*, Dkt. No. 645 (J.P.M.L. Oct. 22, 2014) (CTO-51).

5. Other defendants in *Griggs* and *Allen* opposed the transfers and moved to vacate the Conditional Transfer Orders. *See id.*, Dkt. No. 568 (*Griggs*); Dkt. Nos. 663 & 666 (*Allen*).

6. Briefing has concluded with respect to both conditional transfer orders. A panel hearing regarding the *Griggs* transfer has been scheduled for December 4, 2014. A panel hearing has not yet been scheduled regarding the *Allen* transfer, but the Anonymous Defendants expect that a hearing will be scheduled to take place within approximately 60 days.<sup>2</sup>

---

<sup>2</sup> As a comparison, the JPML scheduled the panel hearing in *Griggs* to take place 64 days after briefing concluded.

7. In light of the pending transfer proceedings in *Griggs* and *Allen*, the Anonymous Defendants request that this Court stay the deadline to answer, move to dismiss, or otherwise file responsive pleadings in the above-captioned matter until 30 days after the conclusion of both the *Griggs* and *Allen* transfer proceedings. Such a stay will allow the Anonymous Defendants to file one master answer, or one set of responsive pleadings, applicable to all three federal cases pending against them in the event that *Griggs* and *Allen* are transferred. A stay of the responsive pleading deadline will ensure that all parties in the three cases referenced in this motion—*Moore* (the instant case), *Griggs*, and *Allen*—will be properly before the Court at the time that the Court considers any motion (or motions) to dismiss filed by the Anonymous Defendants. Such a stay will preserve judicial resources and reduce cost and delay, both of which are objectives consistent with the purpose behind multidistrict proceedings. Moreover, and significantly, the requested stay will not prejudice any other party

8. Accordingly, the Anonymous Defendants request that this Court enter an order staying the deadline to answer, move to dismiss, or otherwise file responsive pleadings in the above-captioned matter until 30 days after the conclusion of the *Griggs* and *Allen* transfer proceedings, whichever is later. For the purposes of this motion, the transfer proceedings are to be deemed concluded on the latest date that the JPML enters a final transfer order or vacatur of the conditional transfer order in either the *Griggs* or *Allen* cases.

9. WHEREFORE, Anonymous Health Care Providers 1, 2, 3 and 5 respectfully request that the Court stay the deadline to answer, move to dismiss, or otherwise file responsive pleadings in the above-captioned matter until 30 days after the conclusion of the *Griggs* and *Allen* transfer proceedings, whichever is later.

Dated: December 4, 2014

By their attorneys,

/s/ Sarah P. Kelly  
Sarah P. Kelly (BBO #664267)  
skelly@nutter.com

NUTTER McCLENNEN & FISH LLP  
Seaport West  
155 Seaport Boulevard  
Boston, Massachusetts 02210  
(617) 439-2000  
(617) 310-9461 (FAX)

OF COUNSEL:

Yvonne K. Puig\*  
Texas State Bar No. 16385400  
[yvonne.puig@nortonrosefulbright.com](mailto:yvonne.puig@nortonrosefulbright.com)  
Adam T. Schramek\*  
Texas State Bar No. 24033045  
[adam.schramek@nortonrosefulbright.com](mailto:adam.schramek@nortonrosefulbright.com)  
Eric J. Hoffman\*  
Texas State Bar No. 24074427  
[eric.hoffman@nortonrosefulbright.com](mailto:eric.hoffman@nortonrosefulbright.com)

FULBRIGHT & JAWORSKI LLP  
98 San Jacinto Blvd., Suite 1100  
Austin, Texas 78701  
(512) 536-2450  
(512) 536-4598 (FAX)

Marcy Hogan Greer\*  
Texas State Bar No. 08417650  
[mgreer@adjtlaw.com](mailto:mgreer@adjtlaw.com)

ALEXANDER DUBOSE JEFFERSON &  
TOWNSEND LLP  
515 Congress, Suite 2350  
Austin, Texas 78701  
(512) 482-9300  
(512) 482-9303

\*Appearing Pro Hac Vice in  
Case No. 1:13-md-2419

Approved as to Form:

/s/ John C. Thornton

John C. Thornton  
(CA State Bar No. 84492)  
*Attorney for Plaintiff*  
ANDREWS & THORNTON  
2 Corporate Park, Suite 110  
Irvine, California 92606  
Tel: (949) 748-1000  
Fax: (949) 315-3540  
E-mail: jct@andrewsthornton.com

**CERTIFICATE OF SERVICE**

I certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing this 4th day of December, 2014.

/s/ Sarah Kelly

Sarah P. Kelly

2692162.1